



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
ARCHITECTURE AND ENGINEERING DIVISION

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PROCEDURE FOR OTHER THAN RETAINAGE DEPOSIT OF OBLIGATIONS

18-1-301 through 18-1-304 MCA

1. Per the referenced section of Montana Code Annotated, a contractor is permitted to choose one of several methods to deposit funds otherwise due him with the agency in lieu of retainage. This procedure is established to maintain uniformity and provide instruction in handling of the obligations.
2. A&E Division shall determine the amount of retainage for the entire project or that portion under consideration as retainage from progress payment(s).
3. A&E Division shall inform the contractor of the amount to be held as retainage.
4. The contractor may then choose one of several methods to make a withdrawal and deposit such in an institution as designated by the contractor. The institution chosen shall be a national bank, state bank, trust company, or safe deposit company located in the state of Montana. The method chosen by the contractor is limited to the following per 18-1-301MCA:
 - a) U.S. treasury bonds, U.S. treasury notes, U.S. treasury certificates of indebtedness, U.S. treasury bills.
 - b) Bonds or notes of the state of Montana.
 - c) Bonds of any political subdivision of the state of Montana of a market value not exceeding par at the time of deposit.
 - d) Certificates of deposit (CDs) drawn and issued by a national banking associated located in the state of Montana; or any banking corporation incorporated under the laws of the state of Montana.
5. A&E Division shall then enter into a written agreement with the designated institution *after* notice to the contractor's surety. The surety shall be notified by letter and the written agreement per 18-1-302 MCA between A&E and the institution shall contain, as a minimum, the verbiage in the attached Agreement.
6. A copy of the Agreement shall be kept in the blue contract file with another to the contractor. The designated institution may wish to possess the original of the Agreement.
7. Banks will not allow a different time frame for renewal other than the original (e.g. 18 month maturity time cannot be converted to a 30 day if contract is close to completion). The renewal period will be automatic. Banks must require dual signature on the account as a minimum. This makes management of the funds difficult since it will require the dual signature or the renewal will occur. The contractor will have to be liable in the Agreement for any early withdrawal penalties.
8. The best method available to date appears to be establishment of a Cash Management Account or an Escrow Account with the written Agreement. This would allow maturation of the CDs and then permit it to remain liquid in the account without an automatic renewal but the contractor would not have access to it. Additional CDs can be placed in the account at any time permitting management of a single entity and not multiple CDs or bonds. Financial institutions which must qualify as a national bank, state bank, trust company, or safe deposit company. This type of account is also subject to an annual fee which the contractor must pay.
9. General Contractors are required to allow subcontractors to participate in any securities held in retainage but all management of such proporations and distributions are the responsibility of the contractor.